OEDCA DIGEST

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Office of Employment Discrimination Complaint Adjudication

Summaries of Selected Decisions Issued by the Office of Employment Discrimination Complaint Adjudication

FROM THE DIRECTOR

The Office of Employment Discrimination Complaint Adjudication is an independent, adjudication unit created by statute. Located in the Office of the Secretary, OEDCA's function is to issue the Department's final decision or order on complaints of employment discrimination filed against the Department. The Director, whose decisions are not subject to appeal by the Department, reports directly to the Secretary of Veterans Affairs.

Each quarter, OEDCA publishes a digest of selected decisions issued by the Director that might be instructive or otherwise of interest to the Department and its employees. Topics covered in this issue include reprisal, disability discrimination, and "hostile environment" harassment.

Also included in this issue is the second in a series of articles concerning frequently asked questions and answers pertaining to the rights and responsibilities of employees and employers with regard to requests for reasonable accommodation of a disability.

The *OEDCA Digest* is available on the internet at: www.va.gov/orm.

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I

COMPLAINANT FAILED TO SHOW THAT HIS DIABETIC CONDITION AMOUNTED TO A DISABILITY UNDER THE *REHABILITATION ACT* AND THE *AMERICANS WITH DISABILITIES ACT*.

OEDCA recently accepted an EEOC judge's decision finding that the VA did not discriminate against an employee because of his diabetic condition.

The employee alleged that his supervisor was treating him differently because of his diabetes when the supervisor denied him a lunch break on one occasion, criticized him in the presence of other employees, refused to provide him with light duty assignments, refused to grant him administrative absences, refused to provide his physician with a position description so that the physician could evaluate the need for a job accommodation, and other miscellaneous incidents.

The EEOC judge concluded, and OEDCA agreed, that the complainant was unable to establish even a *prima facie* case of disability discrimination because he failed to demonstrate that he has a "disability" as defined by the *Rehabilitation Act,* the *Americans with Disabilities Act*, and EEOC's governing regulations. To prove the existence of a disability, an individual must show that he or she has a physical or mental impairment that substantially limits one or more major life activities, or has a record of such an impairment, or is regarded as having such an impairment. "Major life activities" include – but are not limited to –functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The complainant did present medical evidence of his impairment, *i.e.*, his diabetic condition. However, he failed to offer any evidence that his diabetes substantially limited any of his major life activities, including his ability to work. Absent such evidence, the complainant was unable to prove that he has a disability as defined by EEO law and regulations. Hence, his disability discrimination claim failed.

This case highlights an important and often misunderstood principle of disability law – *i.e.*, that the name given to a medical condition is irrelevant to the question of whether that condition constitutes a disability. Medical conditions such as diabetes, epilepsy, cancer, *etc*. may or may not be disabilities, depending on the extent to which they limit the individual's major life activities. In some cases, individuals with these medical conditions may not be significantly limited in any of their major life activities; hence, they would not be disabled within the meaning of EEO law and regulations.

II

BI-POLAR DISORDER CONTROLLED BY MEDICATION NOT A DISABILITY UNDER THE *REHABILITATION ACT* AND THE *AMERICANS WITH DISABILITIES ACT*.

OEDCA recently accepted an EEOC administrative judge's decision finding no disability discrimination in a case that

highlights the importance of considering the effects of medication when determining whether or not an individual has a disability within the meaning of the *Rehabilitation Act and* the *Americans with Disabilities Act.*

The complainant was diagnosed with bi-polar disorder — also referred to as manic depression. Six months after she was hired as a Medical Supply Technician, she received an interim evaluation that rated her performance as "Unacceptable." A few months later, management notified her that she would be terminated because of unacceptable performance. She thereafter filed an EEO complaint alleging, in part, that her termination was due to her bi-polar disorder.

An EEOC judge concluded, and OEDCA agreed, that the complainant failed to establish a *prima facie* case of disability discrimination because she failed to demonstrate that she has a "disability" as defined by the above statutes and EEOC's governing regulations. To prove the existence of a disability, an individual must show that he or she has a physical or mental impairment that substantially limits one or more major life activities, or has a record of such an impairment, or is regarded as having such an impairment. "Major life activities" include – but are not limited to – functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The complainant did present medical evidence of a mental impairment, *i.e.*, her bi-polar disorder. However, she also admitted in her testimony that the medication she takes — lithium — effectively controls it. She presented no evidence that the disorder substantially limits any of her major life activities, including her ability to work.

Although she claimed that her medication "sometimes slows [her] down", she offered no explanation as to what she meant by "slows" and no evidence as to how this side effect of the medication impacts on any of her major life activities. As for the major life activity of working, she argued that her performance was acceptable and warranted retention, thus acknowledging that the claimed side effect of the medication had no bearing on her ability to work.

OEDCA concluded, as did the EEOC administrative judge, that absent evidence of a substantial limitation on one or more of the complainant's major life activities, and absent evidence that her supervisor regarded her as having such a limitation, the complainant was not disabled, as such term is defined by law and regulations and, hence, unable to prove that she was discriminated against because of a disability.

This case highlights an important principle of disability law recently established by the U.S. Supreme Court. When determining if a medical impairment constitutes a disability – *i.e.*, whether the impairment substantially limits a major life activity — both the positive and negative effects of medication, assistive devices, and/or compensating behaviors must be considered. Thus, a medical condition such as bi-polar disorder, which would normally be substantially limiting without medication — and hence a disability – is not a disability if medica-

tion controls it to the extent that neither the condition nor the side effects of the medication substantially limit any major life activities.

III

REMOVAL OF CERTAIN JOB DUTIES PENDING RESOLUTION OF EMPLOYEE'S EEO COMPLAINT FOUND TO BE REPRISAL

A shuttle bus passenger accused the complainant of driving the bus in a reckless manner. Although several other passengers who were on the shuttle bus at the time in question contradicted the allegation made against the complainant, and although there was no other evidence to support it, complainant's second-level supervisor eventually suspended his right to drive all motor vehicles. The suspension occurred after an EEO manager had approached the supervisor about the complainant's concerns and told him that the complainant had contacted an EEO counselor.

Direct evidence, in the form of credible testimony provided by the complainant's first level supervisor (S1), left no doubt as to management's motivation for the action taken against the complainant. Specifically, she testified unequivocally that during a discussion with the second-level supervisor (S2), he told her that because the complainant had an EEO complaint pending, he [the complainant] should not be allowed to drive any government motor vehicles until the EEO complaint was "settled".

Although S2 denies making that statement, OEDCA found S1's testimony to be more credible, as it was clearly against her interest to testify against her supervisor, and because S2 never found that the complainant was actually driving recklessly. Accordingly, OEDCA issued a final order in the complainant's favor, and directed the VA facility in question to provide the complainant with appropriate, make-whole relief.

This case illustrates the point that supervisors may not take actions that negatively impact an employee simply because the employee has engaged in EEO complaint activity. It is possible that the supervisor in this case may not actually have intended to violate the anti-retaliation provisions of Title VII of the *Civil Rights Act*. He may, in fact, have considered his actions prudent under the circumstances. Even if this were the case, however, he intentionally did what he did because of the complainant's EEO activity. Such a motivation constitutes prohibited retaliation in violation of Title VII of the *Civil Rights Act*.

IV

TROUBLED WORKING RELATIONSHIP WITH SUPERVISOR NOT SUFFICIENT TO ESTABLISH "HOSTILE ENVIRONMENT" HARASSMENT

An employee complained that her supervisor had been harassing her because of her national origin, thereby creating a hostile work environment. By way of evidence, she identified a few instances when her supervisor was rude and verbally humiliated her, and some job-related matters involving duty as-

signments and scheduling.

After reviewing evidence in record, OEDCA agreed with and accepted an EEOC administrative judge's decision that the complainant had failed to prove her claim of discriminatory harassment. This case is especially instructive because it highlights a common misunderstanding by employees as to the legal meaning of the terms "harassment" and "hostile environment."

The EEOC judge correctly found that, even if all of the incidents or matters alleged by the complainant did in fact occur, they did not amount to hostile environment harassment in violation of Title VII of the *Civil Rights Act*. The judge noted that a "hostile work environment" is, according to U.S. Supreme Court decisions, one which is "permeated with 'discriminatory intimidation, ridicule, or insult' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'"

In order to prove such a claim, an employee must do much more than simply show a difficult or stressful work environment. Instead, the employee must first present evidence of verbal or physical conduct that denigrates or shows hostility or aversion towards his or her specific racial, ethnic, or other EEO-protected group. In this case, where the employee alleged harassment because of her national origin, it would require credible evidence of specific comments or conduct directly related to the employee's national origin (*e.g.,* ethnic slurs, jokes, insults, *etc*.).

Second, even if there is evidence of such comments or conduct, the employee must also prove (not simply claim) that the behavior in question was so severe or pervasive that it altered employment conditions and created an abusive working environment. Infrequent or isolated comments, even if they engender offensive feelings, do not constitute an abusive environment.

Although employees frequently allege discriminatory "harassment" in their EEO complaints, few present the type of evidence described above. In most cases, employees are simply complaining about a difficult supervisor or routine work-related matters such as duty assignments, time and attendance issues, training, discipline, performance appraisals, *etc*. Such complaints are properly analyzed as disparate (*i.e*., discriminatory) treatment cases rather than "hostile environment harassment" cases. In other words, the focus will be on whether each specific event or personnel action complained of occurred because of discrimination, as opposed to whether there was a hostile and abusive work environment due to discrimination.

As noted above, the EEOC judge in this case correctly observed that, while the conduct at issue in this case clearly distressed the employee, and while she undoubtedly found her supervisor difficult and her work environment stressful and unpleasant, she nevertheless failed to prove that the supervisor engaged in discriminatory insult or ridicule or other similar conduct directly related to her national origin. In addition, the matters of which she complained were not so severe or pervasive as to create a hos-

tile, abusive work environment. Indeed, they were typical of routine job-related problems normally encountered everyday in the workplace.

The judge also analyzed this case under the disparate treatment theory to determine if any of the specific incidents complained of were due to intentional discrimination because of the complainant's national origin. The judge found that, while it was clear that the complainant's relationship with her supervisor had always been tense and uncordial, there was no direct or indirect evidence that this problem was due to her national origin.

V

FREQUENTLY ASKED QUESTIONS AND ANSWERS CONCERNING AN EMPLOYER'S DUTY TO ACCOMMODATE AN EMPLOYEE'S DISABILITY

(Complaints concerning an employer's failure to accommodate an employee's disability account for a significant number of discrimination complaints filed against private and Federal sector employers. Unfortunately, this is one of the most difficult and least understood areas of civil rights law. This is the second in a series of articles addressing some frequently asked questions and answers concerning the reasonable accommodation requirement. The Q&As below cover those issues relating to the employee's request for reasonable accommodation.)

Q. 1. *How must an individual request a reasonable accommodation?*

A. 1. When an individual decides to request accommodation, the individual or his/her representative must let the employer know that (1) s/he needs an adjustment or change at work (2) for a reason related to a medical condition. To request accommodation, an individual may use "plain English" and need not mention the *Americans with Disabilities Act (hereinafter referred to as the "ADA"),* or the *Rehabilitation Act,* or use the phrase "reasonable accommodation."

> Example A: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.
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> Example B: An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.
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> Example C: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.
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> Example D: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

Q. 2. *Must an employer grant a requested adjustment or change?*

A. 2. While an individual with a disability may request a change due to a medical condition, **this request does not necessarily mean that the employer is required to provide the change. A request for reasonable accommodation is the first step** in an informal, interactive process between the individual and the employer. In some instances, before addressing the merits of the accommodation request, the employer needs to determine if the individual's medical condition meets the *ADA* definition of "disability," a prerequisite for the individual to be entitled to a reasonable accommodation.

Q. 3. *May someone other than the individual with a disability request a reasonable accommodation on behalf of the individual?*

A. 3. Yes, a family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. Of course, the individual with a disability may refuse to accept an accommodation that is not needed.

> Example A: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. This discussion constitutes a request for reasonable accommodation.

> Example B: An employee has been out of work for six months with a workers' compensation injury. The employee's doctor sends the employer a letter, stating that the employee is released to return to work, but with certain work restrictions. (Alternatively, the letter may state that the employee is released to return to a light duty position.) The letter constitutes a request for reasonable accommodation.

Q. 4. *Do requests for reasonable accommodation need to be in writing?*

A. 4. No. Requests for reasonable accommodation do not need to be in writing. Individuals may request accommodations in conversation or may use any other mode of communication. An employer may choose to write a memorandum or letter confirming the individual's request. Alternatively, an employer may ask the individual to fill out a form or submit the request in written form, but the employer cannot ignore the initial request. An employer also may request reasonable documentation that the individual has a disability and needs a reasonable accommodation. (See Q&A 7).

Q. 5. *When should an individual with a disability request a reasonable accommodation?*

A. 5. An individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment. The *ADA* does not preclude an employee with a disability from requesting a reasonable accommodation because s/he did not ask for one when applying

for a job or after receiving a job offer. Rather, an individual with a disability should request a reasonable accommodation when s/he knows that there is a workplace barrier that is preventing him/her, due to a disability, from effectively competing for a position, performing a job, or gaining equal access to a benefit of employment. As a practical matter, it may be in an employee's interest to request a reasonable accommodation before performance suffers or conduct problems occur.

Q. 6. *What must an employer do after receiving a request for reasonable accommodation?*

A. 6. The employer and the individual with a disability should **engage in an informal, interactive process** to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

The exact nature of the dialogue will vary. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the employer may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. While the individual with a disability does not have to be able to specify the precise accommodation, s/he does need to describe the problems posed by the workplace barrier. Additionally, suggestions from the individual with a disability may assist the employer in determining the type of reasonable accommodation to provide. Where the individual or the employer are not familiar with possible accommodations, there are extensive public and private resources to help the employer identify reasonable accommodations once the specific limitations and workplace barriers have been ascertained.

Q. 7. *May an employer ask an individual for* ***documentation*** *when the individual requests reasonable accom-modation?*

A. 7. Yes. When the disability and/or the need for accommodation is not obvious**,** the employer may ask the individual for **reasonable documentation** about his/her disability and functional limitations. The employer is entitled to know that the individual has a covered disability for which s/he needs a reasonable accommodation.

Q. 8*. What is meant by the term "reasonable documentation?*

A. 8. Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has a disability, and that the disability necessitates a reasonable accommodation. Thus, an employer, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. This means that in most situations an employer cannot request a person's complete medical records because they are likely to contain information unre-

lated to the disability at issue and the need for accommodation. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires a reasonable accommodation.

An employer may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, employers should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.

As an alternative to requesting documentation, an employer may simply discuss with the person the nature of his/her disability and functional limitations. It would be useful for the employer to make clear to the individual why it is requesting information, *i.e.*, to verify the existence of a disability and the need for a reasonable accommodation.

Example A: An employee says to an employer, "I'm having trouble reaching tools because of my shoulder injury." The employer may ask the employee for documentation describing the impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities (*i.e.*, the employer is seeking information as to whether the employee has a disability).

Example B: A marketing employee has a severe learning disability. He attends numerous meetings to plan marketing strategies. In order to remember what is discussed at these meetings he must take detailed notes but, due to his disability, he has great difficulty writing. The employee tells his supervisor about his disability and requests a laptop computer to use in the meetings. Since neither the disability nor the need for accommodation are obvious, the supervisor may ask the employee for reasonable documentation about his impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities. The employer also may ask why the disability necessitates use of a laptop computer (or any other type of reasonable accommodation, such as a tape recorder) to help

the employee retain the information from the meetings.

Example C: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. The supervisor can ask the spouse to send in documentation from the employee's treating physician that confirms that the hospitalization was related to the multiple sclerosis and provides information on how long an absence may be required from work.

If an individual's disability or need for reasonable accommodation is not obvious, and s/he refuses to provide the reasonable documentation requested by the employer, then s/he is not entitled to reasonable accommodation. On the other hand, failure by the employer to initiate or participate in an informal dialogue with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.

Q. 9. *May an employer require an individual to go to a health care professional of the employer's (rather than the employee's) choice for purposes of documenting need for accommodation and disability?*

A. 9. The *ADA* does not prevent an employer from requiring an individual to go to an appropriate health professional of the employer's choice if the individual provides insufficient information from his/her treating physician (or other health care professional) to substantiate that s/he has an *ADA* disability and needs a reasonable accommodation. However, if an individual provides insufficient documentation in response to the employer's initial request, the employer should explain why the documentation is insufficient and allow the individual an opportunity to provide the missing information in a timely manner. Documentation is insufficient if it does not specify the existence of an *ADA* disability and explain the need for reasonable accommodation.

Any medical examination conducted by the employer's health professional must be job-related and consistent with business necessity. This means that the examination must be limited to determining the existence of an *ADA* disability and the functional limitations that require reasonable accommodation. If an employer requires an employee to go to a health professional of the employer's choice, the employer must pay all costs associated with the visit(s).

Q. 10. *Are there situations in which an employer cannot ask for documentation in response to a request for reasonable accommodation?*

A. 10. Yes. An employer cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the individual has already provided the employer with sufficient information to substantiate that s/he has an *ADA* disability and needs the reasonable accommodation requested.

Example A: An employee brings a note from her treating physician explaining that she has diabetes and that, as a result, she must test her blood sugar several times a day to ensure that her insulin level is safe in order to avoid a hyperglycemic reaction. The note explains that a hyperglycemic reaction can include extreme thirst, heavy breathing, drowsiness, and flushed skin, and eventually would result in unconsciousness. Depending on the results of the blood test, the employee might have to take insulin. The note requests that the employee be allowed three or four 10-minute breaks each day to test her blood, and if necessary, to take insulin. The doctor's note constitutes sufficient documentation that the person has an *ADA* disability because it describes a substantially limiting impairment and the reasonable accommodation needed as a result. The employer cannot ask for additional documentation.

Example B: An employee gives her employer a letter from her doctor, stating that the employee has asthma and needs the employer to provide her with an air filter. This letter contains insufficient information as to whether the asthma is an *ADA* disability because it does not provide any information as to its severity (*i.e.*, whether it substantially limits a major life activity). Furthermore, the letter does not identify precisely what problem exists in the workplace that requires an air filter or any other reasonable accommodation. Therefore, the employer can request additional documentation.

Q. 11. *Is an employer required to provide the reasonable accommodation that the individual wants?*

A. 11. No. The employer may choose among reasonable accommodations as long as the chosen accommodation is effective. Thus, as part of the interactive process, the employer may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability.

If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, the employer may choose the less expensive or burdensome accommodation as long as it is effective (*i.e.,* it would remove a workplace barrier, thereby providing the individual with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment). Similarly, when there are two or more effective accommodations, the employer may choose the one that is easier to provide. In either situation, the employer does not have to show that it is an undue hardship to provide the more expensive or more difficult accommodation. If more than one accommodation is effective, "the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations."

Example A: An employee with a severe learning disability has great difficulty reading. His supervisor sends him many detailed memoranda which he often has trouble understanding. However, he has no difficulty understanding oral communication. The employee requests that the employer install a computer with speech output and that his supervisor send all memoranda through electronic mail which the computer can then read to him. The supervisor asks whether a tape recorded message would accomplish the same objective and the employee agrees that it would. Since both accommodations are effective, the employer may choose to provide the supervisor and employee with a tape recorder so that the supervisor can record her memoranda and the employee can listen to them.

Example B: An attorney with a severe vision disability requests that her employer provide someone to read printed materials that she needs to review daily. The attorney explains that a reader enables her to review substantial amounts of written materials in an efficient manner. Believing that this reasonable accommodation would be too costly, the employer instead provides the attorney with a device that allows her to magnify print so that she can read it herself. The attorney can read print using this device, but with such great difficulty it significantly slows down her ability to review written materials. The magnifying device is ineffective as a reasonable accommodation because it does not provide the attorney with an equal opportunity to attain the same level of performance as her colleagues. Without an equal opportunity to attain the same level of performance, this attorney is denied an equal opportunity to compete for promotions. In this instance, failure to provide the reader, absent undue hardship, would violate the *ADA*.

***Q. 12**. How quickly must an employer respond to a request for reasonable accommodation?*

A. 12. An employer should respond expeditiously to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Similarly, the employer should act promptly to provide the reasonable accommodation. Unnecessary delays can result in a violation of the *ADA*.

Example A: An employer provides parking for all employees. An employee who uses a wheelchair requests from his supervisor an accessible parking space, explaining that the spaces are so narrow that there is insufficient room for his van to extend the ramp that allows him to get in and out. The supervisor does not act on the request and does not forward it to someone with authority to respond. The employee makes a second request to the

supervisor. Yet, two months after the initial request, nothing has been done. Although the supervisor never definitively denies the request, the lack of action under these circumstances amounts to a denial, and thus violates the *ADA*.

Example B: An employee who is blind requests adaptive equipment for her computer as a reasonable accommodation. The employer must order this equipment and is informed that it will take three months to receive delivery. No other company sells the adaptive equipment the employee needs. The employer notifies the employee of the results of its investigation and that it has ordered the equipment. Although it will take three months to receive the equipment, the employer has moved as quickly as it can to obtain it and thus there is no *ADA* violation resulting from the delay. The employer and employee should determine what can be done so that the employee can perform his/her job as effectively as possible while waiting for the equipment.

Q. 13. *May an employer require an individual with a disability to accept a reasonable accommodation that s/he does not want?*

A. 13. No. An employer may not require a qualified individual with a disability to accept an accommodation. If, however, an employee needs a reasonable accommodation to perform an essential function or to eliminate a direct threat, and refuses to accept an effective accommodation, s/he may not be qualified to remain in the job.